Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Sandwich Isles Communications, Inc.,	)	File No.: EB-IHD-15-00019603
Waimana Enterprises, Inc.,	)	NAL/Acct. No.: 201732080004
Albert S.N. Hee	)	FRN: 0001514090
	)	
	)	
	)	
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE AND ORDER

Adopted: December 5, 2016 **Released: December 5, 2016**

By the Commission: Commissioner O'Rielly approving in part and concurring in part.

Heading Paragraph #

I. INTRODUCTION

1. Congress has directed the Commission to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular and high cost areas . . . have access to

rates charged for similar services in urban areas."[1] The Commission has four universal service programs, one of which is the federal high-cost program (also known as the Connect America Fund).[2] Within the high-cost program, rate-of-return companies receive high-cost universal service support to help defray the costs for building and maintaining telecommunications plant from the local telephone central offices to customer premises where those costs are particularly high, as in rural areas.[3] To fund these universal support mechanisms, telecommunications carriers are required to contribute, on an equitable and nondiscriminatory basis, to the Universal Service Fund (USF or the Fund).[4] The Commission has an ongoing obligation to use universal service funds efficiently and to protect the Fund from waste, fraud and abuse. Parties that defraud or otherwise harm the high-cost program not only deprive the Fund of much-needed funds, but also potentially harm residents in high-cost areas, who may not have access to modern networks. In this Notice of Apparent Liability for Forfeiture (NAL), we continue our commitment to fight waste, fraud and abuse in the USF.

2. We find that Sandwich Isles Communications, Inc. (SIC), apparently violated Section 220 of the Communications Act of 1934, as amended (the Act), by failing to keep its accounts, records, and memoranda in the manner prescribed by the Commission under its rules (Rules)[5] and apparently violated Sections 69.601(c) and 69.605(a) of the Commission's Rules by submitting and certifying inaccurate data submitted in annual cost studies for cost study years 2002 through 2013 that were used in the calculation of the federal high-cost program. In a companion order, *Sandwich Isles Communications, Inc.*, WC Docket No. 10-90, Order, FCC 16-167 (2016) (*2016 SIC Order*), the Commission also finds that SIC failed to comply with the Commission's Rules by using high-cost support for purposes other than "the provision, maintenance, and upgrading of facilities and services for which the support is intended."[6]

3. Based upon on our independent review of the facts and circumstances of this case, as well as an investigation conducted by the Universal Service Administrative Company (USAC),[7] the Commission finds in the *2016 SIC Order* that SIC misclassified costs relating to its cable and wire facilities, overstated the costs related to the lease of abandoned water mains from its affiliate, and, as a result, received improper payments of more than $27 million from the Fund's high-cost program.[8] Although we find repeated violations of our Rules over a number of years, as discussed below, we specifically find, pursuant to Section 220(d) of the Act and Section 1.80(c) of our Rules, that SIC, Waimana Enterprises, Inc. (Waimana) and Albert S.N. Hee are apparently jointly and severally liable for a proposed forfeiture penalty in the amount of $49,598,448 based upon violations related to cost study

[1] 47 U.S.C. § 254(b).

[2] 47 U.S.C. § 254(e)(3).

[3] 47 U.S.C. § 254(e); 47 CFR § 54.7. Prior to the Telecommunications Act of 1996 (the '96 Act), support was provided through implicit subsidies between carriers. After the Commission implemented the universal service provisions of the '96 Act, support was provided through explicit payments from the Fund. *See generally Universal Service First Report and Order*.

[4] 47 U.S.C. § 254(d). Carriers generally pass on their contributions to the Fund to their customers as a charge on customer bills.

[5] Pursuant to Section 220, the Commission may, "prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers . . . including the accounts, records, and memoranda of the movement of traffic, as well as of the receipts and expenditures of moneys" and "shall require that each common carrier shall maintain a system of accounting methods, procedures, and techniques . . . which shall ensure a proper allocation of all costs to and among telecommunications services, facilities, and products...." 47 U.S.C. § 220(a)(1), (a)(2).

[6] *See* 47 CFR § 54.7.

[7] USAC's report is hereby incorporated by reference in this NAL. Memorandum to FCC from USAC, Investigation of Sandwich Isles Communications, Inc., dated May 13, 2016 (USAC Report).

[8] *2016 SIC Order* at 17-18, para. 57.

years 2010, 2011, 2012, and 2013. The proposed forfeiture reflects the gravity of apparently persistent misconduct and furthers the Commission's goals of ensuring accountability for past conduct, deterring future violations by carriers, and promoting compliance with our Rules.

II. BACKGROUND

A. Regulatory Framework of the High Cost Program/Connect America Fund

4. As we noted above, the federal high-cost program is designed to ensure that consumers in rural, insular, and high-cost areas have access to modern communications networks capable of providing voice and broadband service, both fixed and mobile, at rates that are reasonably comparable to those in urban areas.[9] The local exchange telephone industry is primarily characterized as an industry with large, fixed capital investments that represent a high percentage of total costs. Historically, the Commission has recognized that incumbent telephone companies experience large amounts of capital investment cost and in some areas cannot recover all of their costs from end user rates.[10] The high-cost program allows eligible telecommunications carriers (ETCs) that serve high-cost areas to recover some of their costs from the Fund. In evaluating whether particular costs can be included in a carrier's revenue requirement, the Commission allows recovery through regulated rates only when a cost is "used and useful" in the provision of regulated services; specifically, only if it is "necessary to the efficient conduct of a utility's business, presently or within a reasonable future period."[11] The Commission has held that "imprudent or excessive investment, for example, is the responsibility and coincident burden of the investor, not the ratepayer."[12]

5. Part 54 contains Rules governing the federal universal service programs, including the high-cost support mechanism.[13] USAC, as the administrator of the federal universal service support mechanisms, collects and distributes universal service funds.[14] Under the high-cost program, high-cost loop support (HCLS) provides support for some loop costs that otherwise would be recovered in the intrastate jurisdiction, while interstate common line support (ICLS) provides support for that portion of the interstate common line revenue requirement that is not recovered from end users through subscriber line charges. Carriers may use support only for the "provision, maintenance, and upgrading of facilities for which the support is intended."[15]

6. In the *USF/ICC Transformation Order*, the Commission comprehensively reformed universal service funding for high-cost, rural areas, adopting fiscally responsible, accountable, incentive-based policies to preserve and advance voice and broadband service while ensuring fairness for

[9] Congress created the federal universal service mechanisms to ensure, among other things, that "consumers in all regions of the Nation, including . . . consumers . . . in rural, insular, and high cost areas . . . should have access to telecommunications and information services . . . that are reasonably comparable to those services provided in urban areas" and at reasonably comparably rates. 47 U.S.C. § 254(b). *See Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), *aff'd sub nom In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014) (*USF/ICC Transformation Order*).

[10] *See Moultrie Independent Telephone Company et al.*, Order, 16 FCC Rcd 18242, 18247, para. 11 (2001).

[11] *American Tel and Tel. Co.*, Phase II Final Decision and Order, 64 FCC 2d 1, at 38, para. 111 (1977).

[12] *Id.* at para. 112.

[13] *See* 47 CFR Part 54.

[14] *See* 47 CFR §§ 54.701(a), 702(b).

[15] 47 CFR § 54.7; *see also* 47 U.S.C. § 254(e).

consumers who pay into the Fund.[16] The Commission did not fundamentally alter the major support mechanisms in place for rate-of-return carriers at the time, specifically HCLS and ICLS.[17]

7. Smaller incumbent local exchange carriers (LECs) operate under rate-of-return regulation at the federal level and currently receive high-cost support based on their historical costs.[18] Rate-of-return companies must comply with the Commission's Rules, including Parts 32, 36, 54, 64, and 69.[19] The Uniform System of Accounts (Part 32) are accounting rules specifically tailored to the telecommunications industry that require carriers to maintain certain cost and revenue accounts.[20] Rate-of-return carriers must directly assign or allocate investments, expenses, and revenues between regulated and nonregulated activities using the rules contained in Part 64 (Cost Allocations).[21] The regulated investments, expenses and revenue are then separated between the intrastate and interstate jurisdictions in accordance with Part 36 (Jurisdictional Separations).[22]

8. Separations are intended to apportion costs among categories or jurisdictions by actual use or by direct assignment.[23] Under the Commission's Rules, telecommunications property includes, but is not limited to, "telecommunications plant in service," general support facilities, central office[24]

[16] *See generally USF/ICC Transformation Order*, 26 FCC Rcd 17663 (2011).

[17] 47 CFR § 54.302; *USF/ICC Transformation Order*, 26 FCC Rcd at 17765, para. 274 (adopting Section 54.302). Among other things, the Commission adopted a new rule that established a $250 per line per month cap on high-cost support, exclusive of Connect America Fund Intercarrier Compensation Replacement support ($250 cap).

[18] Cost companies receive compensation for the use of their facilities in originating and terminating interstate services on the basis of their actual interstate costs for performing those functions. In connection with high-cost support, cost companies receive support based on information contained in their cost studies. Average schedule companies receive support based on formulas that use the reported costs of the cost companies. The Commission recently amended its Rules to provide rate-of-return carriers with the option of electing to receive Connect America support based on a forward-looking cost model. *See Connect America Fund et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3096-97, para. 20 (2016) (*Rate-of-Return Reform Order*). SIC is a rate-of-return carrier.

[19] *See* 47 CFR Parts 32, 36, 54, 64, and 69.

[20] Part 32 specifies the asset, liability, equity, revenue and expense accounts that must be maintained to record amounts for preparation of a carrier's financial statements for its regulated and nonregulated activities. *See, e.g.,* 47 CFR §§ 32.14, 32.23.

[21] 47 CFR §§ 64.901–.904. Specifically, when a carrier subject to the Act uses the same facilities to provide both telephony service and a nonregulated service such as cable, the carrier must allocate the costs of such facilities between these services. *See also* 47 CFR § 32.14(a) (providing that "regulated accounts shall be interpreted to include the investments, revenues and expenses associated with those telecommunications products and services to which the tariff filing requirements contained in Title II of the Communications Act of 1934 . . . are applied"); 47 CFR § 32.23 (describing nonregulated activities).

[22] *See* 47 CFR Part 36. The separations procedures set forth in Part 36 are designed primarily for the allocation of property costs, revenues, expenses, taxes and reserves between state and interstate jurisdictions. *See* 47 CFR § 36.1(b). The jurisdictional separations process begins with the Uniform System of Accounts, Part 32 of the Commission's Rules. *See* 47 CFR § 36.1(f). For purposes of jurisdictional separation, "the Commission distinguishes traffic sensitive costs from non-traffic sensitive costs…. [T]hese terms refer respectively to exchange company costs that vary with the extent of phone usage and those that do not." *City of Brookings Municipal Telephone Co. v. FCC*, 822 F.2d 1153, 1156 (D.C. Cir. 1987).

[23] 47 CFR § 36.2(a)(1).

[24] *See* Appendix to Part 36 (providing that, a central office is "a switching unit, in a telephone system which provides service to the general public, having the necessary equipment and operations arrangements for terminating and interconnecting subscriber lines and trunks or trunks only").

equipment, and cable and wire facilities (C&WF).[25] "The fundamental basis on which separations are made is the use of telecommunications plant in each of the operations,"[26] and telecommunications plant, "in general, is segregable into two broad classifications, namely, (i) interexchange plant, which is plant used primarily to furnish toll services, and (ii) exchange plant, which is plant used primarily to furnish local services."[27] Additionally, Sections 36.151 – 36.157 explain the separations procedures for C&WF. Under the Commission's Rules, C&WF "are basically divided between exchange and interexchange."[28] Section 36.151(c) explains that "[i]n the separation of the cost of cable and wireless among its operations the first step is the assignment of the facilities to certain categories."[29] Category 1 C&WF (Exchange Line C&W Excluding Wideband) includes facilities between local central offices and subscriber premises used for, among other things, message telephone, private line and local channels,[30] and Category 3 consists of Interexchange C&WF and are facilities used for "message toll and toll private line services."[31] Section 36.156(b) provides that the cost of Category 3 C&WF shall be directly assigned, where feasible.[32] Our Rules allow for an expense adjustment,[33] and "[i]n order to allow determination of the study areas and wire centers that are entitled to an expense adjustment" each LEC must provide the National Exchange Carrier Association (NECA) [34] "with the information listed for each study area in which such incumbent LEC operates."[35]

[25] 47 CFR § 36.101.

[26] 47 CFR § 36.1(c).

[27] 47 CFR § 36.2(b)(1).

[28] 47 CFR § 36.152(a).

[29] 47 CFR § 36.151(c); *see* 47 CFR § 36.152(a)-(c) (explaining the four categories of C&WF).

[30] 47 CFR § 36.152(a)(1). C&WF "are basically divided between exchange and interexchange." 47 CFR § 36.152(a). Category 2 C&WF are Wideband and Exchange Trunk. *See* 47 CFR § 36.152(a)(2). Category 4 includes Host/Remote Message C&WF. *See* 47 CFR § 36.152(c).

[31] *See* 47 CFR § 36.152(b). "It includes cable and wire facilities carrying intertoll circuits, tributary circuits, the interexchange channel portion of special service circuits, circuits between control terminals and radio stations used for overseas or coastal harbor service, interlocal trunks between offices in the different exchange or metropolitan service areas carrying only message toll traffic and certain tandem trunks which carry principally message toll traffic." *Id.*

[32] 47 CFR § 36.156(b).

[33] Part 36 historically permitted carriers that serve high-cost areas to allocate additional local loop costs to the interstate jurisdiction through a so-called "Expense Adjustment" and to recover those costs through the high-cost loop support (HCLS) mechanism, thus making intrastate telephone service in high-cost areas more affordable. In 2014, the relevant provisions contained in Part 36 were moved to Part 54 without substantive change. The Expense Adjustment currently is codified at 47 CFR § 54.1310.

[34] NECA is an intra-industry, not-for-profit corporation charged with administering the Commission's interstate access charge system and associated revenue pools. *See* https://www.neca.org/About_Us.aspx (last visited July 25, 2016). Pursuant to the Commission's Rules, NECA is responsible for, among other duties, collecting cost data, including revenue, expense, and investment data, from all pooling LECs to develop specific revenue requirements in order to recover incurred costs allocated to the interstate jurisdiction under the Commission's jurisdictional Rules in 47 CFR Part 36. *See* 47 CFR § 69.601(a). Carriers also provide operating data pertaining to working loops, exchange counts and non-traffic sensitive data to NECA.

The NECA pool is an averaging mechanism to smooth out access rates for small carriers over a larger base of costs and revenues. Small telephone companies are allowed to participate in the voluntary cost and revenue pools associated with the access tariff filed by NECA. NECA calculates and files rates based on overall pool costs of small telephone companies, who in turn share in pool revenues in proportion to their costs. *See* 47 CFR § 69.601.

[35] 47 CFR § 54.1305; *see* 47 CFR §§ 54.1319 (providing for the calculation of loop cost), 54.1310 (providing for the calculation of expense adjustment).

9. After the costs are jurisdictionally separated, carriers apportion their interstate-regulated costs among the interexchange services and rate elements that form the cost basis for the incumbent LECs' interstate access tariffs in accordance with Part 69 of the Commission's Rules.[36] Consistent with Part 69, carriers must submit "cost studies" – data on cost, demand and access revenue to NECA. Carriers must submit certain data necessary to calculate HCLS payments to NECA, and NECA in turn transmits that information to USAC.[37] Carriers and their agents submitting those forms must certify that the information contained therein is accurate. Pursuant to Section 69.601(c), carriers must include with their data submissions to NECA a certification providing "that the data have been examined and reviewed and are complete, accurate, and consistent with the [R]ules of the Federal Communications Commission."[38]

B. Relevant Entities and Persons

10. *Sandwich Isles Communications, Inc.* (SIC): SIC, a Hawaii corporation,[39] was designated as an eligible telecommunications carrier (ETC) in 1997 as the incumbent LEC to provide service to customers on Hawaiian Home Lands.[40] SIC is a wholly owned subsidiary of Waimana.[41] SIC employed approximately 80 people[42] and provided and/or received business services from Waimana and several affiliate companies owned and/or controlled by Albert Hee and separate irrevocable trusts for the benefit of Hee's three adult children (Hee Children Trusts).[43]

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[36] *See* 47 CFR Part 69. Sections 201 and 202 of the Communications Act of 1934, as amended, require that rates, terms and conditions for telecommunications services be just and reasonable, and prohibit unjust or unreasonable discrimination. 47 U.S.C. §§ 201, 202. Part 69 implements, in part, these provisions of the Act, and establishes the rate structure for access charges to be paid by interexchange carriers to LECs for the origination and termination of long distance calls, as well as the access charges to be paid directly by end users. These rate structure rules establish the access charge rate elements as well as the nature of the charges, such as whether they are assessed on a per-minute or a flat-rate basis. Part 69 Rules also govern how rate-of-return LECs calculate their access charge rates.

[37] NECA analyzes cost data, performs certain calculations, and then transmits the information to USAC for use in determining HCLS payments to eligible carriers. *See* 47 CFR §§ 54.54.1305-54.1307; *see also* 47 CFR § 69.605(a). HCLS predates the enactment of Section 254 and the creation of USAC.

[38] *See* 47 CFR § 69.601(c) (providing that an officer or employee must "certify that the data have been examined and reviewed and are complete, accurate, and consistent with the rules of the Federal Communications Commission," and providing that "[p]ersons making willful false statements in this data submission can be punished by fine or imprisonment under the provisions of the U.S. Code, Title 18, Section 1001")

[39] *See Connect America Fund, Sandwich Isles Communications, Inc. Petition for Waiver of Section 54-302 of the Commission's Rules,* WC Docket No. 10-90, Order, 28 FCC Rcd 6553, 6556, para. 6 (2013).

[40] Hawaiian Home Lands are land areas held in trust for the benefit of Native Hawaiians in the state of Hawaii pursuant to the Hawaiian Homes Commission Act, 1920 July 9, 1021, 42 Stat. 108, *et seq.*, as amended.

[41] *See* Trial Tr. vol. 3, 207.

[42] *See* USAC Report at 79.

[43] The Hee Children Trusts are separate irrevocable trusts held for the benefit of Albert Hee's three children. [redacted] *See* Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart." [redacted] *Id.* The childrens' trusts also own Paniolo Cable Company, LLC by way of their interest in its holding company, Blue Ivory Hawaii Corp. *See Application for Consent to Transfer Control of the Cable Landing License for the Paniolo Fiber Optic Cable System*, File No. SCL-T/C-20090225-00003, Public Notice, 24 FCC Rcd 5300, 5301 (IB 2009). For purposes of this NAL, the separate irrevocable trusts shall be collectively referred to as the Hee Children Trusts, unless explicitly noted otherwise.

11. Following its designation as an ETC, SIC consistently participated in the high-cost support program. From at least 2000 through 2013, SIC submitted an annual cost study and other data submissions to NECA and USAC. In each instance, a SIC official certified the accuracy of the cost study data submissions pursuant to Section 69.601(c).[44] Based on data submitted as part of its annual cost studies, as of June 2015, SIC had received approximately $249,227,589 in total from the Fund's high-cost program since 2002.[45]

12. *Waimana*: Waimana is a Hawaii corporation formed in 1988 and is the direct holding company for SIC.[46] From the time of its incorporation until approximately 2013, Albert Hee owned 100 percent of Waimana's stock.[47] Around 2013, Albert Hee's ownership interest in Waimana was reduced to 10 percent.[48] The remaining 90 percent ownership interest in Waimana was divided among the Hee Children Trusts.[49] In addition to SIC, Waimana served as a holding company for numerous corporate entities that are owned or controlled by Albert Hee and/or the Hee Children Trusts.[50] According to SIC, Waimana provides '[redacted] for SIC and Waimana's subsidiaries and affiliates.[51] From 2002-2015, SIC paid Waimana an average of [redacted] percent of Waimana's annual revenue and received more than $[redacted] directly from SIC pursuant to a management agreement executed between the companies.[52] Hee, during the relevant period for this investigation, from 2001 to approximately 2013, was the sole director on Waimana's board of directors. In or around 2013, Wendy R. Hee, Adrianne Hee, Breanne Hee-Kahalewai, and Charlton Hee joined Hee on Waimana's board of directors.[53]

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[44] For cost study years 2000 and 2001, Judy Ushio, Controller, signed the certifications as SIC's authorized official. For cost study years 2002-2013, Abigail Tawarahara, Controller, signed SIC's cost study certifications.

[45] In 2011, SIC filed a petition seeking waiver of Section 54.302 of the Commission's Rules, which established a $250 per line per month cap on high-cost universal service support, claiming that absent a waiver it would be forced into insolvency. The Wireline Competition Bureau denied the request, stating that "Sandwich Isles has certain expenses that appear grossly excessive and unreasonable … Sandwich Isles has spent millions of dollars with affiliated and related entities that appear unrelated to the provision of a broadband-capable network." *Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules*, WC Docket No. 10-90, Order, 28 FCC Rcd 6553, para.12 (WCB 2013).

[46] *See* Trial Tr. vol. 3, 207; Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart."

[47] *See* Trial Tr. vol. 2, 30; Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart." The Hee Children Trusts also own [redacted]. *See* Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart."

[48] Sandwich Isles, as a domestic or international telecommunications carrier, was required to file an application for approval of transfer of control when Waimana changed its ownership pursuant to section 214 of the Communication Act of 1934, as amended. *See* 47 U.S.C. § 214; 47 CFR §§ 63.03; 63.04 and 63.24(c). No such application was filed.

[49] *See* Trial Tr. vol. 9, 135-36; Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart."

[50] Waimana's corporate structure consists of several affiliate companies each owned directly or indirectly by Albert Hee and/or the Hee Children Trusts. USAC asked SIC to provide a listing of any companies under Albert Hee's/the Hee Children Trusts' ownership between 2002-2015 (either direct or parent/ subsidiary relationship). SIC indicated that there were [redacted] related/affiliate companies. *See* USAC Report at 93. SIC also stated that there had been [redacted] additional affiliate companies created (but now with suspended operations) from 1988-2005. *Id.*

[51] *See* Response to USAC Investigation, Initial Requested Document, Request No. 3.

[52] Information on file in EB-IHD-15-00019603.

[53] *See* Trial Tr. vol. 3, 7; Trial Tr. vol. 9, 44; Response to USAC Investigation, Audit Inquiry – "WEI Minutes_Part1," "WEI Minutes_Part2," "WEI Minutes_Part3," "Item 21 – Affiliate Board Members."

13. *Albert S.N. Hee*: Albert Hee was the sole shareholder of Waimana from its incorporation in 1988 until approximately 2013.[54] As discussed throughout this NAL, from at least 2000 through 2013, Albert Hee held multiple positions within Waimana, SIC, and other affiliate companies, serving as a board member and/or officer at each of the aforementioned companies. In the case of Waimana, Albert Hee served as the sole director for many years.[55]

14. *Paniolo Cable Company, LLC (Paniolo Cable)*: Paniolo Cable was the owner of a fiber optic cable network leased by SIC to provide telephone services in its exchange areas.[56] SIC received monthly payments from the NECA pool for certain costs associated with the Paniolo Cable lease. Paniolo Cable was owned by Blue Ivory, LLC (Blue Ivory), and the sole managing member of Blue Ivory was Blue Ivory Hawaii Corp. (Blue Ivory Corp).[57] Blue Ivory was owned entirely in [redacted] by the Hee Children Trusts.[58] [redacted], served as the sole, uncompensated officer and director of Blue Ivory Corp.[59]

15. *ClearCom, Inc. (ClearCom)*: Waimana is the sole shareholder company for ClearCom, a Hawaii corporation.[60] Among other services, ClearCom assisted or oversaw the construction of the Paniolo Cable network that was owned by the Hee Children Trusts under the entity name, Blue Ivory, and leased by Sandwich Isles.[61] ClearCom leased abandoned water mains from the City and County of Honolulu and subleased the water mains to SIC for use as underground conduits for cable and wire facilities.[62] SIC "[redacted]"[63] SIC

[54] *See* Trial Tr. vol. 2, 50; *see also* Trial Tr. vol. 4, 89; Trial Tr. vol. 9, 135-36.

[55] *See* SIC Response to USAC Investigation, Audit Inquiry - "WEI Minutes_Part1," "WEI Minutes_Part2," "WEI Minutes Part3."

[56] *See* SIC Response to USAC Investigation, Audit Inquiry - "Item 31_Paniolo Cable Company AFS."

[57] *See Sandwich Isles Communications, Inc. Petition for Waiver of Section 54.302 of the Commission's Rules, Order, 28 FCC Rcd 6553, 6556, para. 7 (WCB 2013) (Sandwich Isles Waiver Order); Actions Taken Under Cable Landing License Act,* Public Notice, 24 FCC Rcd 5300 (IB 2009); *see also* SIC Response to USAC Inquiry, "Item 3_Corporate Ownership Interest Chart." According to SIC, the corporate structure related to Paniolo Cable and Blue Ivory was created in order [redacted] of the undersea fiber optic cable network. *See* SIC Response to USAC Investigation, Audit Inquiry # 60.

[58] Joint Application for Authority under the Cable Landing License Act and Section 1.767 of the Commission's Rules to Transfer Control of Cable Landing License Holder Paniolo Cable Company, LLC, File No. SCL-T/C-20090225-00003, at 2 (filed Feb. 25, 2009) (Paniolo Cable Transfer Application). Previously, at least in 2009, the Blue Ivory Corp officer and trustee of Hee Children Trusts was Janeen-Ann A. Olds.

[59] *See* Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart."

[60] *See* Trial Tr. vol. 2, 50; Trial Tr. vol. 4, 89; see also Response to USAC Investigation, Audit Inquiry - "3_Corporate Ownership Interest Chart."

[61] *See* Comments of AT&T, Sandwich Isles Communications, Inc. Petition for Declaratory Ruling, WC Docket No. 09-133, at 2, n. 7 (filed April 28, 2016); Trial Tr. vol. 6, 146.

[62] *See* "Sandwich Isles Communications Inc. Financial Statements and RUS Letters, Years Ended December 31, 2013 and 2012" at 14, 15. ClearCom was awarded a license from the Board of Water Supply for the City and County of Honolulu in December 2001 for a term of 30 years. *See id.* at 15.

[63] *See* Service Agreement (Technical and Governmental Relations Services) between Sandwich Isles Communications, Inc. and ClearCom, Inc., dated January 1, 2001.

stated that ClearCom had only one employee as of June 2015.[64] From at least 2001 to 2011, Hee served as president of ClearCom.[65]

16. *Ho'opa'a Insurance Corporation (Ho'opa'a)*: Ho'opa'a, a Hawaii corporation, was wholly owned by Waimana.[66] According to SIC, Ho'opa'a provided insurance services to [redacted], including SIC.[67] Waimana provided [redacted]. During the relevant period, Ho'opa'a [redacted].[68] From at least 2003 to 2013, Albert Hee served as [redacted][69]

17. *Corporate Directors and Officers*: During the period of 2000 through 2013, several persons held simultaneous, overlapping positions as directors and officers among the companies owned and/or controlled by Hee. In particular, the overlapping directors and officers during this period often included Robert Kihune, Randall Ho, and Janeen-Ann A. Olds. [redacted] served as a director of Waimana, SIC, ClearCom and Ho'opa'a, and as an officer of Waimana, SIC, and Ho'opa'a.[70] [redacted] similarly served as a director and officer of SIC and Ho'opa'a. Janeen-Ann Olds was previously the trustee of the Hee Children Trusts, president of Blue Ivory Corp, and counsel for Waimana and SIC.[71] In 2013, Janeen-Ann Olds became the President/CEO of SIC.[72]

18. In addition to overlapping officers and directors of the companies, the employees of the companies performed functions and tasks on behalf of the companies as directed. In some instances, but not all, the overlapping duties of the employees were based upon a management agreement between the affiliate companies.[73]

C. Albert Hee's Criminal Tax Fraud Conviction

19. On March 25, 2015, a federal grand jury sitting in the District of Hawaii charged Albert Hee in a second superseding indictment (Indictment) with six counts of criminal tax fraud and one count of corruptly impeding the administration of the internal revenue laws in violation of Title 26, United States Code, Sections 7212(a) and 7206(1), respectively.[74] The Indictment alleged that Albert Hee caused Waimana to pay personal and family expenses on his behalf and to falsely deduct the payments as

[64] USAC Report at 71.

[65] *See* Master Services Agreement between ClearCom, Inc. and Oceanic Time Warner Cable, LLC, dated June 25, 2013.

[66] *See* Trial Tr. vol. 4, 89; Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart."

[67] *See* Response to USAC Investigation, Audit Inquiry – "Item 46 – 1 Ho'opa'a background information."

[68] USAC Report at 72; *see also* Response to USAC Investigation, Audit Inquiry – "Item 22 – List of Active Employees 2013-2015 Hoopaa [*sic*] Insurance – None."

[69] *See* Response to USAC Investigation, Audit Inquiry – "Item 45 – capital distribution Hoopaa [*sic*]."

[70] *See* USAC Report at 75-76. See also Response to USAC Investigation, Audit Inquiry – "WEI Minutes_Part1," "WEI Minutes_Part2," "WEI Minutes_Part3," "Item 21 – Affiliate Board Members."

[71] *See* Paniolo Cable Transfer Application at 6-7.

[72] *See* Response to USAC Investigation, Audit Inquiry -"3_Corporate Ownership Interest Chart."

[73] *See* USAC Report at 71, 75 (indicating that the corporate structure consisted of many affiliate agreements, "without which, it appears that the many of the entities would not be able to operate" and "throughout the last decade, even as often as annually, it appears that employees are shifted from one entity to another").

[74] Second Superseding Indictment, *United States v. Albert S.N. Hee*, No. 14-cr-00826-SOM (D. Haw. June 23, 2015) (ECF No. 55). The original indictment of Albert Hee was filed on September 17, 2014, and the superseding indictment was filed on December 17, 2014.

legitimate business expenses.[75] The Indictment stated that, "the Defendant [Albert Hee] caused WEI to pay a total of $4,063,294.39 of his personal expenses" for the time period 2002 to 2012 for the benefit of Albert Hee's children and many other services directly benefiting Albert Hee. The four million dollars in personal expense payments, which Albert Hee did not report as income, resulted in personal federal taxes due and owed in the amount of $425,988. On July 13, 2015, Albert Hee was convicted on all counts and on January 6, 2016, was sentenced to 46 months in federal prison.

20. During the 11-day trial by jury, which began on June 23, 2015, the United States presented overwhelming testimonial and documentary evidence that Albert Hee directed Waimana, as well as its subsidiaries, to pay personal expenses for the sole benefit of him and his family from 2002 through 2013. Among other witnesses, Nancy Henderson, Albert Hee's personal assistant, and several accountants (who provided accounting services to Albert Hee, Waimana, and other affiliate companies) testified regarding the bookkeeping and accounting processes used at the direction of Albert Hee.

21. Nancy Henderson, who reported directly to Albert Hee and had been employed at Waimana for 15 years, testified that Albert Hee "had final authority on any decision" at Waimana.[76] Nancy Henderson explained that Albert Hee personally authorized and directed numerous expenses that were for the benefit of him and his family to be reimbursed or directly paid by Waimana. Nancy Henderson further explained that Albert Hee, and no one else, requested and approved corporate checks to be issued for his personal expenses, and that the checks were often signed by Albert Hee, who maintained signatory authority over the companies' accounts.[77] Moreover, Albert Hee personally instructed Nancy Henderson on how to record and categorize the personal expenses and payments in Waimana's books as business expenses incurred by Waimana or an affiliate company.[78]

22. Several of Waimana's accountants testified that they relied on Albert Hee and Waimana "for the proper recording of transactions in the books of account" and "for the substantial accuracy of the financial records" in order to prepare the financial statements and tax returns for Waimana and its affiliated companies, including Sandwich Isles and ClearCom.[79]

23. Testifying on his own behalf, Albert Hee asserted that he did not play a role in the categorization of his personal expenses. Notwithstanding his assertions, Albert Hee acknowledged, "I make a decision on what charges go to what company, whether there's a business purpose, and then it's dealt with by the accountants[.]"[80]

24. Two of Albert Hee's children, Adrianne. Hee and Charlton Hee, also corroborated Albert Hee's authority and control over Waimana, SIC and other affiliate companies during the period of 2002 through 2012. Although the Hee Children Trusts had significant ownership interests in several companies, both Adrianne Hee and Charlton Hee testified to having no role in the management of the companies during the aforementioned period.[81] Rather, Adrianne Hee explained that she was enrolled as

[75] The Indictment further alleged that Albert Hee failed to report the receipt of the payments on his own tax returns, and as a result, Albert Hee unlawfully reduced his corporate and individual tax liability in violation of 26 U.S.C. § 7206(1). Second Superseding Indictment, *United States v. Albert S.N. Hee*, No. 14-cr-00826-SOM (D. Haw. June 23, 2015) (ECF No. 55).

[76] Trial Tr. vol. 2, 47 and 51.

[77] *See, e.g.*, Gov't Ex. 4-101; Trial Tr. vol. 2, 54-58 (discussing payment of Albert Hee's masseuse as "consulting services").

[78] *Id*.

[79] *See, e.g.*, Trial Tr. vol. 3, 8-9.

[80] Trial Tr. vol. 9, 194-195. *See also* Trial Tr. vol. 10, 8.

[81] Breanne Hee-Kahalewai, Hee's third adult child, returned to Hawaii in 2012 to work at SIC. At the end of 2013, Breanne Hee-Kahalewai became the Director of Corporate Services at SIC and, beginning in or about 2013, joined the WEI Board of Directors. *See* Trial Tr. vol. 9, 44. Following Hee's criminal conviction, as of August 26, 2015, (continued….)

a full-time college student from fall 2004 to June 2009, a graduate student from September 2010 to June 2013, and, during summer breaks, interned in various positions on the mainland and attended summer school programs.[82] Adrianne Hee further conceded that she did not work at Waimana from July 1, 2010, through June 30, 2011, while enrolled in graduate school even though Waimana payroll records reflected otherwise and that, at the time of her testimony, she had been employed at other companies located on the mainland since approximately January 2014.[83]

25. Charlton Hee similarly testified that he did not have a management role in the companies affiliated with Waimana and, for most of the relevant period, was otherwise employed with third-party entities outside of Hawaii. Charlton Hee testified that from the fall of 2008 to the spring of 2012, he was a college student on the mainland and after returning to Hawaii had made "art and sculpture" his "occupation."[84] Charlton Hee also testified regarding his limited, part-time employment at Waimana after returning from college in 2012. Notably, Charlton Hee stated that his duties at Waimana were the same as in 2004, when he was in the ninth grade: to work "on the weekends out at the Mililani property" driving the tractors to "cut grass."[85] Charlton Hee further testified that in December 2012, he worked full-time for one or two months as a field technician installing telephone cables and emergency phone lines.[86] Charlton Hee also testified that at the time of the trial, he had been working for a Hawaii state agency for the past four months, while continuing to receive a salary from Waimana.[87]

26. The prosecution provided evidence of numerous instances in which Albert Hee authorized the use of corporate funds for his personal expenses. For example, from at least 2003 through 2012, Albert Hee approved payments to his personal masseuse totaling more than $90,000 for personal massages and directed the payments to be recorded as "consulting services."[88] Albert Hee also directed Waimana and its affiliates to reimburse him for cash advances, meals and personal travel; the reimbursed expenses totaled at least $119,909.19, which included $55,232.23 for family vacations to France and Switzerland in 2008, Disneyworld in 2010, Tahiti in 2010, and the island of Hawaii in 2011.[89]

27. The prosecution further provided evidence that Albert Hee directed the use of corporate funds to benefit his family. For instance, Albert Hee instructed Nancy Henderson to use company funds to make payments towards his three children's undergraduate and graduate education expenses and directed the payments to be recorded in corporate accounts as "educational expenses."[90] Waimana paid at least $630,103.39 towards the education of Albert Hee's children.[91] In addition, Albert Hee directed

(Continued from previous page)
SIC informed the Commission that WEI Board of Directors was comprised of Albert Hee, Wendy R. Hee, Adrianne Hee, Breanne Hee-Kahalewai, and Charlton Hee. *See* USAC Report at 20, Exh. B.

[82] Trial Tr. vol. 5, 12-25, 39-40. Although Adrianne Hee testified in depth regarding the numerous summer employment positions she held on the mainland, her resume indicated that she was employed as a "workhand" for SIC during the summers of 2004-2008, *see* Trial Tr. vol. 5, 39-42, in which she "[o]perated heavy machinery, including bulldozers, tractors, and skid steer loaders, charged with the upkeep of a 3,000-square-foot nursery, and the implementation of an irrigation system." Trial Tr. vol. 5, 41.

[83] Trial Tr. vol. 5, 30-36; Gov't Ex. 4-86.

[84] Trial Tr. vol. 4, 8, 29-30.

[85] Trial Tr. vol. 4, 31-32.

[86] Trial Tr. vol. 4, 31, 43.

[87] Trial Tr. vo. 4, 47-48.

[88] *See, e.g.*, Gov't Ex. 4-101; Trial Tr. vol. 2, 54-58 (discussing payment of Albert Hee's masseuse as "consulting services").

[89] Trial Tr. vol. 8, 186, 194, 197.

[90] Trial Tr. vol. 2, 62, 67, 71-72, 79; Gov't Exs. 3-103, 3-104, 3-105, 3-106, 4-82L, 4-82P, 4-820.

[91] Gov't Exs. 3-91 through 3-106, 4-82E through 4-82G, 4-82I, 4-82L, 4-82O, through 4-82Q.

Waimana in 2008 to purchase a $43,000 SUV and a home in California for $1.3 million, using funds from Waimana and an affiliate company,[92] near the university that two of Albert Hee's children (Charlton Hee and Breanne Hee-Kahalewai) attended.[93] While enrolled at the university, the two children lived in the home and used the SUV for their personal use.[94]

28. The evidence presented at trial also demonstrated that Albert Hee instructed Nancy Henderson to place his wife and children on Waimana's payroll and dictated their salaries and benefits.[95] Although she received a full-time salary and benefits, Nancy Henderson testified that Wendy Hee was in the office only "occasionally" or "every couple of months" and saw Wendy Hee do work in the office only "one time."[96] Charlton Hee further testified that Wendy Hee "stayed at home" to care for the family from about 2001 through 2013.[97] Similarly, Nancy Henderson and the Hee children testified that the Hee children received salaries and benefits from Waimana while attending school full-time on the mainland and while employed elsewhere.[98] In fact, business records show that Wendy Hee and the children were paid a total of $1,680,685.92 in salary and benefits from 2002 through 2012.[99]

III. USAC INVESTIGATION

29. On August 5, 2015, based in part on the government's evidence at trial regarding the breadth of personal expenditures by Albert Hee through the use of corporate entities, the Commission's Wireline Competition Bureau (WCB) issued a memorandum to USAC, directing USAC's Internal Audit Division (IAD) to investigate whether SIC received any improper payments from the federal high-cost support mechanism from 2002 to June 2015.[100]

30. The Bureau, in coordination with WCB and USAC, reviewed evidence derived from Albert Hee's criminal trial to assist in determining whether Albert Hee's and Waimana's conduct impacted SIC's compliance with the Commission's Rules. From August 2015 through April 2016, USAC and Commission staff held weekly meetings by telephone with SIC to discuss inquiries and documentation needed for the investigation. USAC focused on SIC's affiliated entities and transactions, SIC's corporate structure, and testing of data submitted for high-cost purposes affecting disbursements between 2002 to June 2015.[101] Throughout the examination, USAC made over 350 inquiries that resulted in SIC submitting over 3,200 files, thus extending its review beyond the criminal trial evidence.[102] On February 5, 2016, USAC issued a preliminary report of the exceptions to the Commission's Rules[103] noted

[92] Gov't Exs. 3-3, 4-82K, 4-100.

[93] Gov't. Ex. 3-3, 4-100.

[94] *See* Trial Tr. vol. 4, 14, 20-25, 27-28.

[95] Trial Tr. vol. 2, 53, 73.

[96] Trial Tr. vol. 2, 52.

[97] Trial Tr. vol. 4, 34.

[98] Trial Tr. vol. 4, 28, 31, 33; Trial Tr. vol. 5, 16, 31-32.

[99] *See*, *e.g.*, Gov't Exs. 4-86 through 4-99.

[100] Among other things, WCB directed USAC to determine if there were sufficient assurances that future high-cost support amounts would be used consistent with the Commission's Rules.

[101] USAC Report at 1.

[102] In its final report, USAC noted that SIC was responsive to most, but not all, of the requests for information. *See* USAC Report at 1. For example, USAC did not receive the financial information of affiliates to SIC, including those entities that had contractual relationships with SIC and receiving funds from SIC. USAC also noted that because of time constraints, it focused on those matters with the largest impact to the Fund. *See* USAC Report at 2.

[103] "Exceptions" to the Commission's Rules used herein refers to apparent noncompliance with the Commission's Rules or program procedures.

during its investigation.[104] After its review of SIC's additional submissions, USAC amended its report and issued a final report on May 13, 2016, identifying certain exceptions to the Commission's Rules that occurred from 2000-2013.[105] In its final report, USAC identified $27,270,390 in overpayments from the Fund to SIC.[106] On June 13, 2016, SIC provided WCB its comments on the USAC Report.[107]

31. As noted above, in a companion order released today, the Commission considers USAC's determinations, and concludes that SIC improperly received more than $27 million from the high-cost support mechanism.[108] The Commission concludes that SIC violated several provisions of the Commission's Rules and directs SIC to amend its cost studies.

A. USAC Investigation of SIC's Practices Regarding its Category 1 Cable and Wire Facilities

32. During its investigation, USAC requested that SIC explain its methodology for allocating C&WF costs under Section 36.152(a)-(c) of the Commission's Rules. SIC indicated that [redacted]. USAC considered the appropriateness of SIC's methodology by reviewing: (1) SIC's allocations for C&WF connecting central office to central office, i.e., routes between central offices; and (2) all "other routes" of SIC (i.e., routes that did not connect central offices).[109]

33. With respect to the routes connecting central office to central office, USAC reviewed maps provided by SIC detailing its interexchange routes (i.e., the cable and wire routes that extend and connect between one point on one of the Hawaiian islands to another point on the same island within SIC's designated service area), as well as, traffic studies submitted as part of its annual cost studies from 2003 through 2013.[110] In its cost study (specifically its traffic study data), SIC labeled its [redacted].[111] In its preliminary report, USAC determined that SIC had improperly allocated costs for facilities connecting central office to central office as Category 1 because, under program Rules, Category 1 C&WF relate only to facilities directly between central offices and subscriber premises.[112] SIC responded to USAC's preliminary report, indicating that [redacted]

[104] SIC submitted a response to the draft report on February 25, 2016.

[105] *See generally* USAC Report. On the same day, WCB sent a letter to SIC's legal counsel noting that any comments to the USAC Report should be submitted to the Bureau by June 13, 2016. *See* Letter from Mathew S. DelNero, Chief, Wireline Competition Bureau, FCC, to James Arden Barnett, Jr., Esq., Counsel to Sandwich Isles, dated May 13, 2016.

[106] USAC also reported that it was unable to make a determination regarding the validity of Waimana's management fees because SIC did not submit specific information demonstrating how the fees related to SIC's obligations under Section 54.7 of the Commission's Rules.

[107] *See* Response of Sandwich Isles Communications to the Universal Service Administrative Company Final Audit Report, June 13, 2016. SIC sought modification and reduction of the total net monetary effect calculated by USAC.

[108] *2016 SIC Order* at 17-18, para. 57.

[109] USAC Report at 7. *See supra* Section III.A.

[110] USAC used the route numbers on the maps and matched them with the route numbers listed in the traffic study data contained in SIC's cost studies. Note: Recipients of high-cost support receive support with a two-year time delay. Specifically, support is calculated for an entire year and submitted to NECA in July of the following year; program support is then disbursed in the following year.

[111] *See* 47 CFR § 36.152(a)(1)-(c) (describing the categories of C&WF).

[112] *See supra* Section III.A; *see also* 47 CFR § 36.152(a)(1).

[redacted]

[113] SIC responded that "

[redacted]

[114]

34. USAC determined that C&WF connecting central offices should not have been allocated to Category 1. USAC indicated that "facilities between central offices inherently cannot carry local traffic, as local traffic is exclusively between central office and subscriber premises."[115] Thus, USAC determined that SIC had classified certain interexchange C&WF as exchange C&WF in contravention of Section 36.152(a)(1), which provides that Category 1 facilities include facilities "between local central offices and subscriber premises."[116] USAC therefore removed the submitted costs from Category 1 and reassigned the costs under Section 36.152(b) of the Commission's Rules.[117] With the reassignment of costs, USAC determined that SIC had received improper payments from the Fund from at least 2005-2015.[118] In *2016 SIC Order* released today, the Commission considers SIC's allocation and concludes that SIC misclassified its facilities as Category 1 facilities.[119]

35. With respect to the "other routes" discussed above, using maps and subscriber data provided by SIC, USAC focused on whether the facilities classified as Category 1 actually served subscriber premises, as required under Section 36.152(a)(1).[120] In its preliminary report, based on the facilities route maps and SIC's subscriber data, USAC identified multiple routes that were not served during certain years, i.e., facilities that did not connect to subscriber premises. In response, SIC provided additional information to USAC, including a listing indicating which C&WF route serviced which exchange. SIC also conceded that subscribers were not served for two separate routes.[121] USAC also reviewed SIC's cost studies to determine which exchanges were listed as serving active subcategory 1.3 loops[122] each year between 2002 and 2013. Based on SIC's admissions and data submissions, USAC determined in its final report that SIC had submitted Category 1 C&WF costs for facilities that did not actually serve any subscriber premises from at least 2004 through 2013. Thus, USAC determined that SIC had received improper payments from the Fund based on its misclassification of C&WF that did not actually serve end-user subscriber premises. Additionally, in the companion order to this *NAL*, the Commission finds that SIC's allocation methodology resulted in substantial C&WF costs being allocated to Category 1 even though the facilities did not directly connect local central offices and subscriber premises.[123]

[113] USAC Report at 9.

[114] USAC Report at 10.

[115] USAC Report at 13.

[116] *See* USAC Report at 7, 13; 47 CFR § 36.152(a)(1).

[117] *Id.*

[118] USAC Report at 15.

[119] The Commission concludes, after reviewing the data submitted by Sandwich Isles, that facilities used for the provision of traffic from one subscriber located in one exchange through a central office and out to another central office connecting with subscriber premises in a different exchange were interexchange in nature, and as a result, do not qualify as Category 1 facilities. *See 2016 SIC Order* at 23, para. 74.

[120] 47 CFR § 36.152(a)(1).

[121] SIC conceded that subscribers were not served for [redacted] Route (from 2007-2013) and [redacted] Route (from 2009-2013); *see 2016 SIC Order* at 22, para 71.

[122] USAC Report at 14; *see supra* Section II.A; 47 CFR § 36.154(a).

[123] *2016 SIC Order* at 23, para. 73.

36. In sum, USAC determined that SIC received $26,230,270 in improper payments from the Fund based on its misclassification of certain C&WF as Category 1 C&WF in cost studies submitted from 2003 to 2013.[124] In today's *2016 SIC Order*, after reviewing the record, including SIC's responses to USAC, the Commission finds that SIC had misclassified its Category 1 C&WF and as a result, received improper payments from the Fund.[125]

B. USAC Investigation of SIC's Practices Related to Lease of Abandoned Water Mains

37. In or about 2001, SIC subleased abandoned water mains for use as underground conduit of cable and wireless facilities from its affiliate, ClearCom. Under the terms of the sublease, SIC was granted use of approximately [redacted] miles of abandoned water mains. At varying times from 2002 through 2013, SIC placed sections of abandoned water mains into use as cable conduit. SIC provided USAC with a schedule of when the company began using certain sections of the water mains and the amounts paid to ClearCom.[126] USAC compared that information to cost studies submitted by SIC to NECA which formed the basis for certain high-cost support calculations.

38. USAC determined that SIC had submitted amount in use amounts higher than what was actually used for the provision of service.[127] Thus, SIC had overpaid ClearCom. Based on the overstatement of water mains in use, USAC calculated that SIC had received improper payments of $711,355 for its 2002-2013 cost studies.

39. In response, SIC conceded that USAC's computations for the overpayment of high-cost support related to the abandoned water mains were correct, and that SIC accordingly received improper payments totaling $711,355. In the *2016 SIC Order*, the Commission considers SIC's practices related to the abandoned water mains and upholds USAC's determinations.[128] The Commission also concludes that SIC violated Section 32.27(c)(2) of the Rules by recording the transaction between SIC and ClearCom above the lesser of fair market value or fully distributed cost.[129]

C. USAC Investigation into Regulated Expenses and a Bonus Payment to Owner

40. USAC examined SIC's expense accounts for the period from January 2013 through June 2015, to assess whether SIC had submitted its costs in accordance with Part 32 of the Commission's Rules. USAC observed that SIC submitted charitable donations and sponsorships, country club fees, and end-of the-year party expenses in its regulated, general and administrative account (Account 6720) costs.[130] USAC also noted that SIC reported personal expenses for Albert Hee, including Hee family meals, personal travel expenses, and cash advances for Albert Hee in its regulated, general and administrative account.

41. USAC requested further information relating to a payment from SIC to WEI in the amount of $[redacted] million that was referenced as a "Bonus to Owner" and disbursed on July 31, 2014.[131] SIC

[124] USAC Report at 15.

[125] *2016 SIC Order* at 22, para. 70.

[126] USAC Report at 28-29.

[127] SIC never claimed 100 percent usage but did claim percentages above those actually used. For example, in Funding Year 2009, SIC claimed 23 percent usage, but based on the actual dates that the additional miles of the water main were put into use, there was only 17 percent usage of the water mains for that year.

[128] *2016 SIC Order* at 37, para. 119 (stating "[g]iven that certain parts of the water mains were not in use during the relevant period, Sandwich Isles failed to demonstrate the cost of leasing such property was 'necessary'" and directing USAC to initiate action to recover this support received for costs of the water mains that were not used).

[129] *2016 SIC Order* at 37, para. 119.

[130] USAC Report at 19-20.

[131] USAC Report at 49.

indicated that the $[redacted]. Although SIC indicated that the board members had approved the bonus payment, USAC determined that SIC had failed to provide adequate documentation regarding how the bonus amounts were determined. USAC determined that the bonus payment was not reasonable and appeared excessive. USAC also noted that SIC had reported the bonus payment in certain regulated accounts, including account 6120 (general support account).[132] USAC stated, "the Commission has recognized that inclusion of excess costs in a carrier's rate base . . . can increase the demands on the [U]niversal [S]ervice [F]und."[133]

42. As a result, USAC determined that SIC received improper payments of $175,090 as a result of improperly submitting its expenses, as well as improperly submitting the $[redacted] million bonus payment to Albert Hee. In the companion order released today, upon review of the record, the Commission concludes that SIC had in fact received improper payments based on its submission of ineligible expenses.[134] Specifically, the Commission finds that all of the donations and sponsorships noted in the USAC Report were not eligible for recovery from the Fund.[135] The Commission also concludes that the bonus payment to Albert Hee was "imprudent and unreasonable."[136]

D. USAC Investigation of Other Issues

43. *Management Fees.* USAC also reviewed management fees paid by SIC pursuant to a management agreement between SIC and Waimana for the period of 2001 through 2013. In particular, USAC examined a lease agreement for commercial office space leased by Waimana in downtown Honolulu, Hawaii (Waimana office space) with a commercial real estate company.[137] USAC determined that under the terms of its commercial lease, Waimana leased the office space for approximately $[redacted] per month[138] but charged SIC $[redacted] per month from 2001 through 2013 for use of space that was shared by Waimana, SIC, ClearCom and other corporate entities owned or controlled by Albert Hee.[139] SIC indicated to USAC that the additional $[redacted] above the actual $[redacted] office lease costs represented part of SIC's share and payment of other office costs charged pursuant to the management agreement, including [redacted].[140] Over the aforementioned time period, Waimana incurred costs of approximately $[redacted] for the leased office space, but charged SIC $[redacted] for its use of the shared space.[141] USAC indicated that SIC had provided a table showing WEI's total office costs (or costs above the rent), but it failed to provide any supporting documentation for WEI's costs.[142] USAC took

[132] *See* 47 CFR §§ 32.6120 (providing information on general support expenses), 35.9999 *et seq.* (providing the instructions and the chart of accounts for expenses accounts).

[133] USAC Report at 48.

[134] *2016 SIC Order* at 39-42, paras. 126-35.

[135] *Id.* at 42, para. 135.

[136] *Id.* at 41, para. 133 (noting, among other things, that at the time SIC made the bonus payment, it was failing to pay obligations under a government loan).

[137] USAC Report at 18-27.

[138] The monthly lease cost included $[redacted] for base rent and an estimated $[redacted] per month for operating expenses. *Id*. at 17.

[139] *Id.*

[140] USAC Report at 22, 24.

[141] *Id.* at 19.

[142] *Id.* at 25.

exception to "the excessiveness of the allocations to SIC."[143] In the *2016 SIC Order*, the Commission also reviews the management fees paid by SIC to Waimana, and concludes that the fees were unreasonable, excessive, and in many cases were unrelated to Sandwich Isles's obligations under section 54.7 of the Commission's Rules.[144] The Commission directs USAC to disallow all management fees paid by SIC to Waimana for the period 2002 to 2015.[145]

44. *Corporate Structure*. USAC requested that SIC provide the internal and audited financials for Paniolo, Ho'opa'a, and ClearCom for certain years from 2002 through 2015.[146] USAC explained that, given the risks associated with the complex affiliate structure, the extent of payments between SIC and its affiliates, and the questionable affiliate transactions discovered during its examination, the affiliate financials were necessary for review.[147] SIC provided limited information in response to USAC's requests and stated that the affiliate information did not involve SIC, and the affiliate companies did not authorize release of the information.[148] SIC also stated that SIC was the only entity regulated by the Commission.[149] Because USAC did not receive the requested financials for Paniolo, Ho'opa'a, and ClearCom, USAC was not able to fully assess SIC's compliance with the Commission's affiliated transactions Rules.[150]

45. In the *2016 SIC Order*, based on the record, the Commission expresses concern that SIC was not complying with the Commission's affiliate transactions rules, and therefore, directs USAC to review SIC's affiliate transactions for costs incurred in calendar year 2016.[151]

IV. DISCUSSION

46. The exceptions to the Commission's Rules identified by USAC warrant enforcement action and are the subject of the present NAL. Based on the evidence developed by USAC and the Commission's independent review of the record, including all arguments made by SIC, we conclude that SIC apparently violated Section 220 of the Act by failing to maintain its accounts, records, and memoranda as prescribed by the Commission, as well as several provisions of the Commission's Rules.[152] We find that SIC apparently failed to keep its accounts, records and memorandum consistent with the Commission's Rules; miscategorized business expenses and regulated costs; and misclassified its C&WF costs, in violation of Parts 32 and 36 of the Commission's Rules. SIC apparently committed each of these violations, in part, by submitting inaccurate cost study data and falsely certifying the accuracy of that data, in violation of Sections 69.601(c) and 69.605(a), which set forth the Commission's Rules for submitting and certifying cost study data relied upon by both USAC and NECA. The Commission

[143] *Id*.

[144] *2016 SIC Order* at 32-36, paras. 102-17.

[145] *Id.* at 36, para. 117.

[146] USAC Report at 68.

[147] *Id*.

[148] *Id*.

[149] *Id.* at 69.

[150] *Id*. at 70; *see also* 47 CFR § 32.27(c).

[151] *2016 SIC Order* at 45, para. 146.

[152] Section 220(g) provides that "[a]fter the Commission has prescribed the forms and manner of keeping of accounts, records, and memoranda to be kept . . . it shall be unlawful . . . to keep the accounts in any other manner than that prescribed or approved by the Commission." 47 U.S.C. § 220(g). *See also* 47 U.S.C. § 220(d).

expressly relied upon Section 220 of the Act, among other provisions, as a statutory basis for its adoption of Sections 69.601(c) and 69.605(a).[153]

47. We find that SIC and Waimana apparently utilized a complex corporate structure under the direction of Albert Hee, and SIC submitted and falsely certified inaccurate data contained in cost studies from 2002 to 2013. The data (1) included misclassification of its C&WF;[154] (2) overstated costs related to the lease of water mains with its affiliate, ClearCom;[155] and (3) reported certain expenses as regulated expenses in contravention of the Commission's prescribed method of accounting.[156] For the reasons discussed herein, we conclude that pursuant to Section 220(d) of the Act, SIC, Waimana, and Albert Hee are jointly and severally liable for forfeiture penalties totaling $49,598,448.

48. Separately, among other things, in the *2016 SIC Order* we find that, because of its violations of our Rules, SIC received improper payments from the Fund.[157] Specifically, we find that SIC acted in contravention of Section 54.7 of the Commission's Rules when it failed to use USF high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[158] Specifically, we find that SIC apparently used a portion of its USF support to pay the personal expenses of Albert Hee and his family.

A. SIC Received More High Cost Support than it was Entitled to by Apparently Violating the Act and the Commission's Rules

(1) SIC Misclassified its Category 1 C&WF

49. Based on our independent review the evidence uncovered in this investigation, SIC misclassified its exchange line-Category 1 C&WF costs resulting in an improperly higher reimbursement from the Fund.

50. In each year from 2003 through 2013, SIC apparently reported most of its C&WF as Category 1 exchange line facilities. SIC, however, misclassified a significant portion of its C&WF costs as Category 1. SIC reported the C&WF used to connect one central office to another central office as exchange line-Category 1 C&WF, when in fact, those facilities should have been recorded by SIC as a Category 2, Category 3, or Category 4 costs. Section 36.152(a)(1) of the Commission's Rules specifically provides that Category 1 C&WF includes "facilities between local central offices and subscriber premises."[159] Thus, based on our review of the record, the facilities connecting central offices could not, under program Rules, be exchange line Category 1 C&WF because they did not connect a local central office to subscriber premises.[160]

51. SIC also apparently reported costs for Category 1 C&WF facilities on routes where there was no subscriber, and thus no connection to subscriber premises, as required under Section 36.152(a)(1).

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[153] *See* 47 CFR §§ 69.601(c), 69.605(a); *see also* 47 CFR § 1.80 (governing forfeiture proceedings in the case of a forfeiture imposed against a carrier under section 220(d)).

[154] *See supra* Section III.A; *see also* 47 CFR §§ 69.601(a), 69.605(a).

[155] *See supra* Section III.B.; *see also* 47 CFR §§ 32.2680, 32.2681, 32.3400, 32.6560, 36.154, 36.152(a); *American Telephone and Telegraph Company*, Phase II Final Decision and Order, 64 FCC 2d 1, 46-47, paras. 111-12 (1977).

[156] *See supra* Sections III.C, D.; 47 CFR §§ 32.14(a), (c) (providing instructions for regulated accounts), 32.23 (describing accounting treatment for "nonregulated activities), 32.4999 *et seq.* (providing instructions for revenue accounts).

[157] *2016 SIC Order* at 35, para. 112.

[158] *Id.* at 34-36, paras. 110, 112, 117; *see also* 47 CFR § 54.7.

[159] 47 CFR § 36.152(a)(1).

[160] *2016 SIC Order* at 24-25, para. 79.

52. Separations are intended to apportion costs among categories or jurisdictions by actual use or by direct assignment,[161] and the Commission's Rules require direct assignment where feasible.[162] The Commission's Rules provide specific procedures for the apportionment of exchange line Category 1 facilities. Section 36.154(a) states that the first step in the apportioning of exchange line C&WF is the determination of an average cost per working loop. In assigning costs as Category 1 C&WF to routes that did not serve subscriber premises, SIC acted in contravention of Section 36.154(a).

53. The federal high-cost program is designed to ensure that consumers in rural, insular, and high-cost areas have access to modern communications networks at rates that are reasonably comparable to those in urban areas.[163] The evidence uncovered in this investigation suggests that SIC purposely allocated most of its C&WF costs as Category 1 because those costs are supported by the high-cost program under the applicable Rules.[164] In so doing, SIC apparently facilitated a scheme that allowed it to receive more support than it was entitled to under program Rules. The evidence established that SIC apparently utilized this scheme from at least 2003-2013.

54. By submitting most of its C&WF as Category 1 exchange line facilities, and reporting costs for Category 1 C&WF facilities on routes where there was no subscriber, SIC received more support from the Fund than to which it was otherwise entitled under program Rules.

55. Each year, from at least 2003 through 2013, SIC submitted and certified the accuracy of information contained in its cost studies, including information relating to its Category 1 C&WF costs.[165] Based on these actions, we find that SIC apparently violated several provisions of the Commission's Rules. In particular, we find that SIC apparently violated Section 69.601(c) of the Commission's Rules by falsely certifying the accuracy of the data contained in its cost studies and Section 69.605(a) by submitting inaccurate cost data.[166]

(2) SIC Overstated Costs Relating to the Lease of Abandoned Water Mains

56. SIC overstated the amount of abandoned water mains it used for regulated local exchange services. In doing so, it violated the long-established ratemaking principle of used and usefulness, as well as the Commission's Rules.[167] SIC entered into a lease with its affiliate, ClearCom, and reported, in its cost studies, data related to costs incurred from use of the water mains. SIC overstated the percentage of the water mains that were in use for the provision of high-cost service at certain times within the lease period.[168] SIC reported the inflated use data in its cost studies and made adjustments to its cost studies to reflect costs related to use of the abandoned water mains. Accordingly, SIC received USF support based on these inflated amounts. Moreover, SIC conceded that USAC's calculations concerning the percentage of the water mains actually in use were correct.[169]

57. Under the used and useful doctrine, the Commission allows carriers to include certain costs in their regulated revenue requirement where the property is necessary for the "efficient conduct of a

[161] *See supra* Section II.A.

[162] *See, e.g.*, 47 CFR §§ 36.153(a), 36.155(a).

[163] *See supra* Section II.A.

[164] USAC Report at 13 (providing that Category 1 C&WF have a significant impact on the fund for high-cost loop and interstate common line support components of the fund).

[165] *See supra* Section II.A.

[166] *Id.*

[167] *Id.*

[168] USAC Report at 29.

[169] *Id*. at 30.

utility's business, presently or within a reasonable future period."[170] Section 54.1305 of the Commission's Rules requires carriers seeking an expense adjustment to file certain information with NECA, including "unseparated, i.e., state and interstate, gross plant investment" in Exchange Line C&WF and "unseparated depreciation expense attributable to Exchange Line C&WF."[171] In this case, SIC apparently submitted inaccurate use data pursuant to Sections 69.605(a) and 54.1305 of the Commission's Rules, including in its regulated revenue requirement property that was not used for the provision of local exchange services.

58. With respect to its use of the abandoned water mains, SIC apparently reported inaccurate in-use data in cost studies submitted from 2002-2013. SIC certified the accuracy of the data contained in each of those cost studies. SIC also sought expense adjustments during certain years based on the inaccurate in-use data relating to its Category 1 C&WF.

59. We find that in the submission of data relating to its water main use, SIC violated several provision of the Commission's Rules.[172] SIC reported inflated costs on accounts 2680, 3400, and 6560, thereby apparently violating Sections 32.2680, 32.3400, and 32.6560 of the Commission's Rules. SIC also violated Section 54.1310 by submitting false information with NECA related to expense adjustments for its Category 1 C&WF. SIC apparently submitted inaccurate cost data pursuant to Section 69.605(a) and falsely certified the accuracy of that data in violation of Section 69.601(c). Moreover, we find that NECA and USAC relied on SIC's accountings and submissions to calculate and/or disburse high-cost support.[173]

B. SIC Received More Support than it was Entitled to Under Program Rules

60. We remain committed to the principles of Section 254 of the Act to provide affordable service to underserved areas, implement fiscal responsibility to control the size of the fund and reduce waste and inefficiency, and require accountability from companies that receive support.[174] In this regard, the Rules governing the high-cost program establish a comprehensive framework for carriers to accurately submit their costs and receive support under the program. Section 54.7 of our Rules expressly provides that "[a] carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."[175] As a result of what appears to be pervasive misconduct that has resulted in the apparent violations of several of our Rules, SIC received high-cost support that was not used for the provision of supported service.[176]

61. Since 2002, SIC received approximately $250 million in high-cost support with substantial amounts of that support apparently being based upon inaccurate cost studies data submitted to NECA, USAC and the Commission.[177] As discussed in this NAL and the USAC report, SIC submitted inaccurate cost data related to Category 1 C&WF and the amount of leased water mains used for the

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[170] *American Telephone and Telegraph Company*, Phase II Final Decision and Order, 64 FCC 2d 1, 46-47, paras. 111-12 (1977) (*American Tel. and Tel. Co. Order*) (stating that "imprudent or excess investment … is the responsibility and coincident burden of the investor, not the ratepayer").

[171] 47 CFR § 54.1305.

[172] *2016 SIC Order* at 37, para. 118-19.

[173] *See supra* Section II.A.

[174] *USF/ICC Transformation Order*, 26 FCC Rcd at 17670, para. 11.

[175] 47 CFR § 54.7(a). "The use of federal universal service support that is authorized . . . shall include investments in plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services." 47 CFR § 54.7(b).

[176] *2016 SIC Order* at 34-35, paras. 110, 112.

[177] USAC Report at 5; *see supra* Section II.A.

provision of high-cost support service.[178] SIC, nevertheless, certified as to the accuracy of the data contained in its annual cost studies.

62. USAC identified several instances in which SIC may have reported inaccurate information in its accounts.[179] USAC reviewed a sample of invoices from Waimana to SIC during the period of 2013 through 2015 and determined that the records showed certain expenses that were recorded as regulated.[180] USAC observed that SIC improperly reported charitable donations, country club fees, and company party expenses in its regulated, general and administrative account (Account 6720) costs.[181] In the same account, USAC also determined that SIC reported travel that was unrelated to SIC, purchases of gas and meals for Albert Hee and his family, and cash advances to Albert Hee.[182]

63. USAC further determined that SIC awarded a $[redacted] million bonus to Albert Hee in 2014.[183] Although SIC explained that the bonus was approved by its board of directors, which was led by Albert Hee, and represented an accrued sum that ran from 2009 through 2012, financial records reflect that the "bonus" was actually transferred to Waimana to ultimately pay approximately $[redacted] in defense attorneys' fees for Albert Hee's criminal matter.[184] We also note that SIC paid the bonus to Albert Hee while failing to pay government debt, and at a period in which the company reported an operating loss.[185] SIC recorded the bonus in its regulated accounts.[186]

64. Albert Hee apparently controlled the finances and accounting practices of SIC, Waimana, and other affiliate corporations. As his personal assistant Nancy Henderson testified, Albert Hee directed SIC to reimburse Waimana and himself, substantial amounts for expenses, including more than $90,000 for personal massages and instructed Nancy Henderson to categorize the payments as "consulting fees" in Waimana's accounts.[187] At Albert Hee's direction, Waimana paid salaries and benefits to his wife and children even though at times they were full-time students, employed by other employers, and they did not provide any services to Waimana. Similarly, Albert Hee directed corporate funds be used to purchase a $1.3 million home and $43,000 vehicle for two of his children to live in and use, respectively, while they were enrolled in college.[188] Albert Hee further directed that corporate funds be used to pay family meals, his children's college tuition, and family vacations to, among other locations, the South Pacific, Europe and Disneyworld.

65. Based on the evidence presented at Albert Hee's criminal trial, the jury found that, from 2002 through 2013, Albert Hee used money from Waimana's, SIC's and other corporate accounts to personally enrich himself and his immediate family.[189] Thus, as demonstrated by both USAC's findings and the evidence from Albert Hee's criminal conviction, SIC, Waimana, and Albert Hee consistently

[178] *See supra* Sections III.C, D.

[179] USAC Report at 38, 40-42.

[180] *See* 47 CFR §§ 32.23, 32.5999(g), 32.6720 (accounting for non-regulated and regulated expenses).

[181] USAC Report at 20, 48.

[182] *Id.* at 20.

[183] *Id.* at 47-48.

[184] A review of financial records reflects transfers for payments that appear to be connected to Albert Hee's criminal defense. On file in EB-IHD-15-00019603.

[185] *2016 SIC Order* at 41-42, paras. 132-33.

[186] USAC Report at 48.

[187] *See supra* Section II.C.

[188] *Id.*

[189] *Id.*

miscategorized expenses. NECA and USAC relied on SIC's inaccurate cost data submissions to award high-cost support. Therefore, SIC apparently received more high-cost support than it was entitled to under program Rules.

66. SIC and Waimana also failed to provide the Commission with financial data related to Waimana and other affiliates that could be used to assess the appropriateness of certain costs for which SIC sought high-cost support.[190] USAC requested internal or audited financial statements for WEI, Paniolo, Ho'opa'a, and ClearCom, but SIC refused to provide the requested documents.[191] For example, SIC did not provide audited financial records related to costs billed monthly by Waimana as management fees for "office costs."[192] SIC stated that the costs above its proportionate share of the leased office space were for other office costs.[193] We are unable to confirm SIC's explanation because SIC did not provide requested supporting documentation for Waimana's costs and other records showed that expenses such as charitable donations, country club fees, and Albert Hee's personal expenses were included in the management fees and reported in cost studies submitted to NECA.

67. As discussed above, SIC conducted several transactions with Waimana and its affiliates, including ClearCom and Paniolo, but declined to provide requested financial information related to those entities. These entities were owned or controlled by Albert Hee, and USF money flowed to them.[194] As the record suggests, SIC was apparently able to obscure its costs through multiple transactions with its affiliates.[195] By virtue of his ownership of SIC, Waimana, and other entities, Albert Hee directed SIC to use an undetermined amount of high-cost support for purposes apparently unrelated to the "provision, maintenance, and upgrading of facilities and services" as required by the Act and Section 54.7 of the Commission's Rules.[196]

68. Additionally, as discussed above, carriers must comply with the accounting rules for telecommunications carriers found in Part 32 of the Commission's Rules. SIC did not do so. The financial data reported pursuant to Part 32 is necessary to support jurisdictional separations and costs of service submissions for ratemaking purposes. Thus, we find that SIC apparently violated Section 32.12(b) by failing to keep its financial records "with sufficient particularity to show fully the facts pertaining to all entries" in the relevant accounts.[197] We note that NECA and USAC relied on SIC's submitted financial data to calculate and/or disburse USF support.

C. Joint and Several Liability of SIC, Waimana, and Albert Hee

69. Based upon the facts and circumstances of this case, SIC, Waimana, and Albert Hee are, for legal purposes, one and the same. Consequently, we find that they should be jointly and severally liable for any penalties and/or forfeitures and/or reimbursements to the Fund.[198]

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[190] *See supra* Section III.D.

[191] USAC Report at 26, 68.

[192] *See supra* Section III.D.

[193] *Id.*

[194] *See supra* Sections II.B, III.

[195] *See* USAC Report at 66-77.

[196] 2016 SIC Order at 34-36, paras. 110, 112, 117; *see also* 47 U.S.C. § 254(e), 47 CFR § 54.7.

[197] 47 CFR § 32.12(b).

[198] *See In the Matter of Telseven, LLC, and Patrick Hines*, Forfeiture Order, 31 FCC Rcd 1629 (2016) (*Telseven Forfeiture Order*) (piercing the corporate veil to find Patrick Hines personally liable for, among other things, his corporation's failure to contribute fully to the Fund).

70. The Commission has previously concluded that it is appropriate to disregard corporate formalities "[w]here the ownership of stock is used to dominate and control the subsidiary in such a manner and to such extent that it becomes a mere agency or instrumentality of the parent, the separate corporate entities may be disregarded" and "separate corporate structures may be ignored where the purpose of a statutory scheme or regulation would otherwise be frustrated."[199] The Commission may hold an entity or individual liable for the acts or omissions of a different, related entity: (i) where there is a common identity of officers, directors, or shareholders; (ii) where there is common control between the entities; and (iii) when it is necessary to preserve the integrity of the Act and to prevent the entities from defeating the purpose of statutory provisions.[200] Where these legal elements are satisfied, as a practical matter, the Commission has held an individual liable for the acts of a separate, corporate entity where the named individual possesses significant operational control of the entity, and his or her actions have furthered the allegedly unlawful conduct. For example, in *Telseven*, we held the sole owner of the company at issue in that case individually liable as an "egregious violator[ ] of the Act who create[d] sham corporate forms to evade liability."[201]

71. In the present matter, SIC and Waimana, during the relevant period, were corporate entities under the common and exclusive ownership and control of Albert Hee. From at least 2002- 2013, Albert Hee was the sole shareholder of Waimana, which wholly owned SIC.[202] Witnesses testified that Albert Hee exercised near complete control of the companies and their operations.[203] SIC and Waimana also shared common officers and directors during the relevant period.[204] Albert Hee served in numerous simultaneous positions for SIC and Waimana, including as the companies' director and president.[205]

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[199] *Petition by Telecable Corp. to Stay Construction or Operation of a CATV System in Bloomington and Normal, Ill., Decision*,19 FCC 2d 574, 587 (1969).

[200] *See Telseven Forfeiture Order*, 31 FCC Rcd at 1631, para. 8. The Commission and the courts have long stated that "[w]here the statutory purpose could … be easily frustrated through the use of separate … entities, the Commission is entitled to look through corporate form and treat the separate entities as one and the same for purpose of regulation." *Improving Pub. Safety Commc'ns in the 800 MHz Band*, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd 13874, 13887–88 (2010) (citing *Gen. Tel. Co. of the S.W. v. United States*, 449 F.2d 846, 854 (5th Cir. 1971)); *see also Capital Tel. Co., Inc. v. FCC*, 498 F.2d 734, 739 (D.C. Cir. 1974) (*Capital Telephone*) (finding that the Commission correctly treated the individual and the corporation he controlled as the same entity and granted only one license and that "substantial evidence supports the Commission's decision to pierce Capital's corporate veil in order to carry out the statutory mandate 'to provide a fair, efficient, and equitable distribution of radio service.'"). The courts have also looked through the corporate form in analogous situations, such as cases involving: the parent and subsidiaries where an entity was created to circumvent agency liability, *Transcontinental Gas Pipe Line Corp. v. FERC*, 998 F.2d 1313, 1321–22 (5th Cir. 1993) (finding that FERC correctly looked behind corporate forms and treated the parent and subsidiaries as a single entity where the parent pipeline set up subsidiaries to sell gas at prices at which the parent could not legally sell); two corporations that were controlled by one family, *Mansfield Journal Co. (FM) v. FCC*, 180 F.2d 28, 37 (D.C. Cir. 1950) (concluding that although two newspapers were separate corporations, with separate editorial staffs, and located in communities over fifty miles apart, the Commission correctly denied applications of both corporations when the record showed that one family owned all of the stock in both corporations, the owners took active part in the control and policy formulation of the newspapers, and the true applicant in each case was the same group of individuals); and several corporations that were used to operate one business, *Schenley Distillers Corp. v. United States*, 326 U.S. 432, 437 (1946) ("The fact that several corporations are used in carrying on the business does not relieve them of their several statutory obligations more than it relieves them of the taxes severally laid upon them.").

[201] *See Telseven Forfeiture Order*, 31 FCC Rcd at 1634, para. 13.

[202] S*ee supra* Section II.B.

[203] *See* Trial Tr. vol. 2, 47, 51.

[204] *See* Responses to USAC Investigation, Audit Inquiry 21 – "Sandwich Isles Communications Inc. Board Members" and Audit Inquiry 80 – Board Meeting Minutes.

[205] *See supra* Section II.B.

Janeen-Ann Olds served as general counsel for SIC and Waimana and currently serves as SIC's CEO and as a director. Robert Kihune also served in several roles for both companies, including Chairman of the Board and CEO of SIC, as well as, an officer at Waimana.[206] Lastly, Albert Hee's daughter, Breanne Hee-Kahalewai, is both an owner (by way of her trust) and a director of Waimana, as well as an officer of SIC.[207]

72. Also, it is undisputed that SIC and Waimana share the same operational space – one in which SIC paid most, if not all, of the lease expense.[208] The entities shared office space, first on Bishop Street, (Honolulu, Hawaii), then in a building owned by ClearCom, but located on real property owned by SIC, in Mililani, Hawaii.[209]

73. The closeness of their operations further corroborates the common identity of SIC and Waimana. In particular, Waimana and its affiliates only existed to service each other.[210] Evidence presented at Albert Hee's criminal trial suggests that Waimana paid Albert Hee's personal expenses, then billed and was reimbursed for such expenses by SIC.[211] SIC in turn sought and received support from the Fund for these expenses.[212] USAC noted that Waimana's corporate structure consisted of several affiliate agreements, "without which, it appears that many of the entities would not be able to operate."[213] Albert Hee moved or assigned employees from one company to another to perform work and used SIC employees to sustain the affiliates who altogether had few, if any, employees.[214]

74. Albert Hee also controlled the finances of both companies. As Nancy Henderson, Albert Hee's long-time assistant, testified, and Albert Hee acknowledged, Albert Hee directed how expenses were allocated to the different companies.[215] Albert Hee categorized specific expenses as business expenses and directed that Waimana place his family members on its payroll.[216] SIC, Waimana, and the affiliated companies did not possess corporate credit cards; rather, Albert Hee used his personal credit cards for company purchases.[217] USAC observed that large volumes of affiliate financial transactions flowed through SIC's accounts.[218] In addition, SIC's payment of management fees to Waimana constituted nearly all of Waimana's total revenue.[219]

75. Furthermore, the facts and circumstances of the present matter require us to disregard the separate corporate identities of SIC and Waimana in order to ensure the integrity of the high-cost program. Holding Waimana and Albert Hee additionally responsible for the apparent violations described

[206] *Id; see supra* Section II.B.; *see also* Responses to USAC Investigation, Audit Inquiry 80 – "Item 80 – BOD WEI, SIC and Miscellaneous Companies."

[207] *See supra* Section II.B.

[208] *See supra* Section III.D; *see also* USAC Report at 17-27.

[209] USAC Report at 54.

[210] *Id.* at 71-72.

[211] *See supra* Section II.C.

[212] *2016 SIC Order* at 35, paras. 111-12; *see supra* Section III.B.2.

[213] USAC Report at 70-71.

[214] *See, e.g.*, Responses to USAC Investigation, Audit Inquiry 28 – List of Employees.

[215] *See supra* Section II.C.

[216] *Id.*; *see* Trial Tr. vol. 2, 47, 51, 54-58; vol. 9, 194-195; vol. 10, 8; Gov't Ex. 4-101.

[217] *See supra* Section II.C; *see also* Trial Tr. vol. 2, 87.

[218] USAC Report at 3, 72.

[219] *See supra* Section III.D.

in this NAL furthers the Commission's goal of properly enforcing rules that are aimed to achieve compliance, enforcement, the recovery of improper payments, and penalties for conduct that results in the transfer of assets from regulated to unregulated entities.[220]

76. SIC apparently sought more USF support than it was entitled to and apparently misused USF support by transferring money to Waimana, as well as other affiliates, that was used for the personal benefit of Albert Hee and his immediate family. Financial records submitted to USAC and obtained from Albert Hee's criminal tax trial reveal "management fees" paid by SIC to Waimana, including personal expenses benefiting Albert Hee and his family.[221]

77. The Commission has previously reiterated its commitment "to providing support that is sufficient but not excessive"[222] and provided "imprudent or excess investment …is the responsibility and coincident burden of the investor, not the ratepayer."[223] The failure of a carrier, such as SIC, to abide by these obligations undermines the goals and purpose of the high-cost program. Accordingly, we find that SIC apparently violated Section 220 of the Act and Sections 69.601(c) and 69.605(a) of the Commission's Rules; and SIC, Waimana, and Albert Hee are jointly and severally liable for the resulting forfeitures and reimbursements to the Fund.

V. PROPOSED FORFEITURE

78. In light of SIC's apparent violations of the Act and the Commission's Rules, we find that a proposed forfeiture is warranted pursuant to Section 220(d) of the Act, which governs forfeitures in instances in which a carrier fails to keep its accounts and records in the manner prescribed by the Commission.[224] Where a carrier fails to maintain "such accounts, records, memoranda, documents,

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[220] *See Telseven Forfeiture Order*, 31 FCC Rcd at 1636, para. 19 (providing,"[i]n an investigation such as this one, where the corporate enterprise was designed to carry out the fraudulent activities of one person . . . we find that the purpose of the statute would otherwise be frustrated if we permitted Patrick Hines to hide behind his corporate entities and avoid personal liability for such statutory violations."); *Ernesto Bustos Licensee of Station WTBL-CD Lenoir, North Carolina*, Forfeiture Order, 29 FCC Rcd 1898, 1900 (2014) (finding that "Catawba Broadcasting and Ernesto Bustos are the same 'person'" and stating that "[a] corporation will be looked upon as a legal entity 'until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.'").

[221] *See supra* Section II.C.

[222] *Fifth Order on Reconsideration*, 27 FCC Rcd at 14557, para. 22 and n.42 (internal quotation omitted); *see also* 47 U.S.C. § 254(b)(1), (4)-(5), (d), (e); *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620-21 (5th Cir. 2000) ("The agency's broad discretion to provide sufficient universal service funding includes the decision to impose cost controls to avoid excessive expenditures that will detract from universal service."); *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222, 1234 (10th Cir. 2005) ("[E]xcessive subsidization arguably may affect the affordability of telecommunications services, thus violating the principle in § 254(b)(1).") (citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1200 (10th Cir. 2001)); *Rural Cellular Assn. v. FCC*, 588 F.3d 1095, 1102 (D.C. Cir. 2009) (explaining that in assessing whether universal service subsidies are excessive, the Commission "must consider not only the possibility of pricing some customers out of the market altogether, but the need to limit the burden on customers who continue to maintain telephone service").

[223] *American Tel. and Tel. Co.*, Phase II Final Decision and Order, 64 FCC 2d 1, at 38, para. 112.

[224] 47 U.S.C. § 220. To impose such a forfeiture penalty, the Commission must issue a notice of apparent liability, and the person against whom the notice has been issued must have an opportunity to show, in writing, why no such penalty should be imposed. 47 CFR §1.80(f). The Commission will then issue a forfeiture if it finds, by a preponderance of the evidence, that the person has violated the Act or a Commission Rule. *See, e.g.*, SBC Communications, Inc., Apparent Liability for Forfeiture, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002); *see also IDT Corp.*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 10805 (2008).

papers, and correspondence," Section 220(d) imposes a per day penalty.[225] Such penalties are subject to mitigation or remission in accordance with Section 504 of the Act.[226] Section 220 violations thus stand in contrast to other infractions for which the Act establishes no specific forfeiture amount.[227]

79. In this NAL, we find, among other things that, SIC apparently violated the Part 32, 36, and 69 of the Commission's Rules when it failed to keep its accounts, records and memorandum consistent with the Commission's prescribed methods; and in a companion *2016 SIC Order*, we find that SIC violated Section 54.7 of our Rules. We find that SIC committed each of these violations, in part, by submitting inaccurate cost study data and falsely certifying the accuracy of that data. We therefore base our proposed forfeiture penalty on apparent violations of Sections 69.601(c) and 69.605(a), which set forth the Commission's Rules for submitting and certifying cost study data relied upon by both USAC and NECA. Sections 69.601(c) and 69.605(a) prescribe the manner in which carriers must submit and certify as to the accuracy of specified documents, and the Commission expressly relied upon Section 220 of the Act, among other provisions, as a statutory basis for its adoption of Sections 69.601(c) and 69.605(a).[228]

A. Proposed Forfeiture Penalty for Failing to Keep Accounts, Records, and Memoranda in the Manner Prescribed by the Commission

80. As a result of the apparent violations of Section 220(d) of the Act and Sections 69.601(c) and 69.605(a) of the Commission's Rules,[229] we find SIC, Waimana, and Albert Hee apparently jointly and severally liable and propose a forfeiture penalty of $49,598,448. As discussed in this NAL and the companion *2016 SIC Order*, SIC submitted and certified inaccurate data in cost studies filed from 2002 through 2013. Pursuant to Section 1.80(c)(2) of the Commission's Rules, however, the proposed forfeiture is specifically based on apparent violations for cost study years 2010, 2011, 2012, and 2013, which occurred within five years of this NAL. In each of these years, SIC filed and certified its cost

[225] 47 U.S.C. § 220(d). The statutory maximum amount of a forfeiture penalty assessed under Section 1.80 of the Commission's Rules is subject to inflation-based adjustments at least once every four years. The Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, Sec. 31001, 110 Stat. 1321 (DCIA), requires the Commission to adjust its forfeiture penalties periodically for inflation. *See* 28 U.S.C. § 2461 note (4). The Commission most recently adjusted its penalties to account for inflation in 2013. *See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, DA 13-1615, 2013 WL 3963800 (Enf. Bur. 2013); *see also* Inflation Adjustment of Monetary Penalties, 78 Fed. Reg. 49,370-01 (Aug. 14, 2013) (setting Sept. 13, 2013, as the effective date for the increases). However, because the DCIA specifies that any inflationary adjustment "shall apply only to violations which occur after the date the increase takes effect," we apply the forfeiture penalties in effect at the time the violation took place. 28 U.S.C. § 2461 note (6). Relevant here, the inflation-adjusted statutory forfeitures that were effective for violations of Section 220(d) from December 6, 2011 – July 31, 2016 was $9,600 per day and $11,362, beginning on August 1, 2016.

[226] *See* 47 CFR § 1.80(b)(4), note, section III; *see also* 47 USC § 504(b) (providing that forfeitures imposed by title II "shall be subject remission or mitigation by the Commission, under such regulations and methods of ascertaining the facts as may seem to it advisable"). For convenience, the Commission treats such forfeitures as prescribed base amounts that are subject to downward adjustment, using the downward adjustment criteria applicable to Section 503 forfeitures in Section II of the note to Section 1.80(b)(4). *See* 47 CFR § 1.80(b)(4), Note, Section III.

[227] In cases where there is no prescribed penalty, forfeiture determinations are governed by Section 503 of the Act, which, among other things, establishes maximum forfeiture amounts that are subject further adjustment based upon the circumstances.

[228] *See* 47 CFR §§ 69.601(c), 605(a); *see also* 47 CFR § 1.80 (governing forfeiture proceedings in the case of a forfeiture imposed against a carrier under section 220(d)).

[229] *See* 47 CFR § 1.80(c)(2) ("In the case of a forfeiture imposed against a carrier under sections 202(c), 203(e), and 220(d), no forfeiture will be imposed if the violation occurred more than 5 years prior to the issuance of a notice of apparent liability.")

study,[230] then subsequently revised each cost study.[231] We note that the revised cost studies included inaccurate data, and to date, SIC has failed to correct the cost studies. Thus, we find that the violations for each of the four revised cost studies continued from the relevant filing date through the date of the release of this NAL.[232] During this period, the per day penalty authorized by Section 220(d) of the Act and Section 1.80(c) of the Rules was first $9,600 then adjusted to $11,362 per day.[233] We therefore calculate a per day penalty for the cost studies for 2010 through 2013.[234] We find no basis for a downward adjustment under Section 1.80 of our rules and thus, do not mitigate the forfeiture penalty. The table below reflects our forfeiture penalty calculation.

Cost Study Year	Certification Date	Penalty Amount (Cert. date - 7/31/16)	Inflation Adjusted Penalty Amount (8/1/16-12/5/16)	Sub-Total
2010	12/6/2011	$9,600.00	$11,362.00	$ 17,732,412.00
2011	12/26/2012	$9,600.00	$11,362.00	$ 14,026,812.00
2012	12/9/2013	$9,600.00	$11,362.00	$ 10,686,012.00
2013	12/12/2014	$9,600.00	$11,362.00	$ 7,153,212.00
				$ 49,598,448.00

81. SIC, Waimana, and Albert Hee received excessive funds as a direct result of the inaccurate submissions and certifications. Based on the total record before us, the widespread scope of the improper conduct at issue, and what appears to be a systematic disregard for the high-cost program Rules, we find that $49,598,448 is an appropriate penalty for the violations identified in this NAL. We find that this proposed forfeiture penalty reasonably reflects the Commission's commitment to protect the Fund from waste, fraud and abuse, as well as the magnitude of SIC's violations.

82. As discussed, we find that piercing the corporate veil is appropriate in this case. Based on the ongoing, widespread conduct exhibited by SIC and Waimana at Albert Hee's direction, we find that the imposition of a significant forfeiture amount is necessary to deter future Rule violations and imposing

[230] For cost study year 2010, the original certification is dated July 29, 2011. For cost study year 2011, the original certification is dated July 29, 2012. For cost study year 2012, the original certification is dated July 31, 2013. For cost study year 2013, the original certification is dated July 23, 2014.

[231] For its revised 2010 cost study, SIC's revised certification is dated December 6, 2011. For its revised 2011 cost study, the revised certification is dated December 26, 2012. For its revised cost study year 2012, SIC's revised certification is dated December 9, 2013. For its revised 2013 cost study, SIC's revised certification is dated December 12, 2014.

[232] We find that these apparent violations continue until these cost studies are corrected. *See, e.g.*, *Purple Communications, Inc.*, Forfeiture Order. 30 FCC Rcd 14892, 14900, para. 25 (2015) (*Purple Forfeiture Order*); *BellSouth Telecommunications, LLC, d/b/a AT&T Southeast*, Notice of Apparent Liability for Forfeiture, FCC 16-98 (FCC July 7, 2016) (*BellSouth NAL*); *Total Call Mobile, Inc.*, Notice of Apparent Liability for Forfeiture and Order, 31 FCC Rcd 4191, 4191, para. 81 (2016) (*Total Call Mobile NAL*); *VCI Company*, Notice of Apparent Liability for Forfeiture and Order, 22 FCC Rcd 15933, 15940, para. 20 (2007) (finding that a carrier's failure to file an accurate form or failure to file a form has a continuing harmful impact on the Universal Service Fund and concluding that the failure to file an accurate form constitutes a continuing violation that does not begin to run until the violation is cured).

[233] *See* 47 U.S.C. § 220(d); *see also supra* Section IV.A., B.

[234] *See supra* n.226 (providing the filing date for each of the revised cost study certifications, which is the first day of each of the four violations included in the forfeiture penalty). For example, the calculation of the 2010 cost study year penalty includes a per day penalty beginning on December 6, 2011, and continuing until today.

a significant forfeiture should achieve broader industry compliance with the Commission's Rules. The Commission has stated:

> Enforcing our accounting [R]ules and reporting requirements is essential for the Commission to carry out its statutory obligations to ensure the rates for telecommunications services remain just and reasonable. Our ability to carry out these obligations is impaired if we cannot rely upon the information that carriers are required to submit about the costs of their operations and their allocations of those costs, or if those allocations are made improperly.[235]

83. Accordingly, we find that SIC, Waimana, and Albert Hee are apparently liable for a forfeiture penalty of $49,598,448 for SIC's repeated violations of Section 220 of the Act and Sections 69.601(c) and 69.605(a) of the Commission's Rules. This penalty is separate from any amount that SIC may be required to repay in order to make the Fund whole.

84. In addition, in light of SIC's egregious misconduct and the demonstrated harm to the Fund from its apparent violations, we order SIC to submit a report, within sixty (60) days of the release of this NAL, explaining why the Commission should not initiate proceedings against SIC to revoke its Commission authorizations, including but not limited to, its Section 214 authorizations. The Commission remains committed to maintaining service to all customers on the Hawaiian Home Lands and will coordinate with the Hawaii Public Utilities Commission (Hawaii Commission) to ensure continued service. The Commission directs WCB to issue a Public Notice seeking comment from the Hawaii Commission, Department of the Hawaiian Home Lands, and other stakeholders on this matter.

VI. ORDERING CLAUSES

85. Accordingly, **IT IS ORDERED** that Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., and Albert S.N. Hee, pursuant to Section 220(d) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, are hereby **NOTIFIED of their APPARENT LIABILITY FOR A FORFEITURE** in the amount of $49,598,448 for violating the Act and the Commission's Rules.

86. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules,[236] within thirty (30) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order, Sandwich Isles Communications, Inc., Waimana Enterprises, Inc., and Albert S.N. Hee **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 88 below.

87. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account number and FRN referenced above. SIC shall also send electronic notification of payment to Loyaan Egal, at Loyaan.Egal@fcc.gov, and Rakesh Patel, at Rakesh.Patel@fcc.gov, Romanda.Williams@fcc.gov, Dangkhoa.Nguyen@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.[237] When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions you should follow based on the form of payment you select:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000,

[235] *In the Matter of US West, Order to Show Cause*, 10 FCC Rcd 5523, para. 2 (1995).

[236] 47 CFR § 1.80.

[237] An FCC Form 159 and detailed instructions for completing the form may be obtained at http://www fcc.gov/Forms/Form159/159.pdf.

or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.[238] If you have questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

88. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.16 and 1.80(f)(3) of the Rules.[239] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, ATTN: Enforcement Bureau, Federal Communications Commission and must include the NAL/Acct. No. referenced in the caption. The written statement shall also be emailed to Loyaan.Egal@fcc.gov, Rakesh Rakesh.Patel@fcc.gov, Romanda.Williams@fcc.gov, and Dangkhoa.Nguyen@fcc.gov.

89. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting principles (GAAP); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

90. **IT IS FURTHER ORDERED** that SIC shall respond to the request in paragraph 84 within sixty (60) calendar days of the release date of this Notice of Apparent Liability for Forfeiture and Order.

[238] *See* 47 CFR § 1.1914.

[239] 47 CFR §§ 1.16, 1.80(f)(3).

91. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, and first class mail to James Arden Barnett, Jr., RDML (ret.) USN, Venable LLP, 575 Seventh Street, NW, Washington, D.C. 20004.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Secretary